

Assembly Bill No. 1246

Passed the Assembly August 24, 2009

Chief Clerk of the Assembly

Passed the Senate August 17, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 11003.4 of the Business and Professions Code, to amend Section 1351 of, and to add Chapter 5 (commencing with Section 817) to Title 2 of Part 2 of Division 2 of, the Civil Code, and to amend Sections 33413.7 and 50073 of, and to repeal Section 33007.5 of, the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1246, Jones. Workforce housing cooperative trust.

(1) Existing law defines “limited-equity housing cooperative” to be a corporation that meets specified criteria. Existing law exempts a limited-equity housing cooperative from specified requirements for the regulation of transactions of subdivided lands.

This bill would revise the definition of a “limited-equity housing cooperative” to also apply to a “workforce housing cooperative trust.” The bill would exempt an entity as so defined from these provisions governing the regulation of transactions of subdivided land if, among other organizations, the Federal Home Loan Bank System or any of its member institutions and school districts directly finance or subsidize at least 50% of the total construction or development cost or \$100,000, whichever is less. The bill also would exempt such an entity from these provisions if the real property to be occupied by the cooperative was sold or leased by the Department of Transportation, other state agency, a city, a county, or a school district for the development of the cooperative and has a regulatory agreement, as specified.

(2) Existing law defines “limited-equity housing cooperative” to mean a corporation organized on a cooperative basis that meets specified requirements.

This bill would revise the definition of a “limited-equity housing cooperative” to also apply to a “workforce housing cooperative trust.” The bill would, except as provided, prohibit a board of directors from returning transfer value, either full or partial, to a member of the board while he or she still remains a member of the board, and would prohibit an existing member of the board of directors from accepting the return of his or her transfer value,

either full or partial. The bill would authorize that, in any suit against a board of directors and its members based upon a breach of corporate or fiduciary duties or a failure to comply with specified requirements, a prevailing plaintiff recover reasonable attorney's fees and costs. The bill would prohibit an organization formed under the act that uses public funds from using any corporate funds to avoid compliance with its provisions, and from pursuing dissolution if the intent or outcome is for the members to receive any payment in excess of the transfer value to which he or she is entitled, pursuant to specified law. The bill would impose procedural requirements relating to the dissolution of a limited-equity housing cooperative or workforce housing cooperative trust that receives or has received a public subsidy.

This bill also would provide for the manner in which a workforce housing cooperative trust is organized and operated, as specified. The bill would make technical and conforming changes to existing law.

The people of the State of California do enact as follows:

SECTION 1. Section 11003.4 of the Business and Professions Code is amended to read:

11003.4. (a) A "limited-equity housing cooperative" or a "workforce housing cooperative trust" is a corporation that meets the criteria of Section 11003.2 and that also meets the criteria of Sections 817 and 817.1 of the Civil Code, as applicable. Except as provided in subdivision (b), a limited-equity housing or workforce housing cooperative trust shall be subject to all the requirements of this chapter pertaining to stock cooperatives.

(b) A limited-equity housing cooperative or a workforce housing cooperative trust shall be exempt from the requirements of this chapter if the limited-equity housing cooperative or workforce housing cooperative trust complies with all the following conditions:

(1) The United States Department of Housing and Urban Development, the United States Department of Agriculture, the National Consumers Cooperative Bank, the California Housing Finance Agency, the Public Employees' Retirement System (PERS), the State Teachers' Retirement System (STRS), the Department of Housing and Community Development, or the

Federal Home Loan Bank System or any of its member institutions, alone or in any combination with each other, or with the city, county, school district, or redevelopment agency in which the cooperative is located, directly finances or subsidizes at least 50 percent of the total construction or development cost or one hundred thousand dollars (\$100,000), whichever is less; or the real property to be occupied by the cooperative was sold or leased by the Department of Transportation, other state agency, a city, a county, or a school district for the development of the cooperative and has a regulatory agreement approved by the Department of Housing and Community Development for the term of the permanent financing, notwithstanding the source of the permanent subsidy or financing.

(2) No more than 20 percent of the total development cost of a limited-equity mobilehome park, and no more than 10 percent of the total development cost of other limited-equity housing cooperatives, is provided by purchasers of membership shares.

(3) A regulatory agreement that covers the cooperative for a term of at least as long as the duration of the permanent financing or subsidy, notwithstanding the source of the permanent subsidy or financing has been duly executed between the recipient of the financing and either (A) one of the federal or state agencies specified in paragraph (1) or (B) a local public agency that is providing financing for the project under a regulatory agreement meeting standards of the Department of Housing and Community Development. The regulatory agreement shall make provision for at least all of the following:

(A) Assurances for completion of the common areas and facilities to be owned or leased by the limited-equity housing cooperative, unless a construction agreement between the same parties contains written assurances for completion.

(B) Governing instruments for the organization and operation of the housing cooperative by the members.

(C) The ongoing fiscal management of the project by the cooperative, including an adequate budget, reserves, and provisions for maintenance and management.

(D) Distribution of a membership information report to any prospective purchaser of a membership share, prior to purchase of that share. The membership information report shall contain full disclosure of the financial obligations and responsibilities of

cooperative membership, the resale of shares, the financing of the cooperative including any arrangements made with any partners, membership share accounts, occupancy restrictions, management arrangements, and any other information pertinent to the benefits, risks, and obligations of cooperative ownership.

(4) The federal, state, or local public agency that executes the regulatory agreement shall satisfy itself that the bylaws, articles of incorporation, occupancy agreement, subscription agreement, any lease of the regulated premises, any arrangement with partners, and arrangement for membership share accounts provide adequate protection of the rights of cooperative members.

(5) The federal or state agency shall receive from the attorney for the recipient of the financing or subsidy a legal opinion that the cooperative meets the requirements of Section 817 of the Civil Code and the exemption provided by this section.

(c) Any limited-equity cooperative, or workforce housing cooperative trust that meets the requirements for exemption pursuant to subdivision (b) may elect to be subject to all provisions of this chapter.

(d) The developer of the cooperative shall notify the Department of Real Estate, on a form provided by the department, that an exemption is claimed under this section. The Department of Real Estate shall retain this form for at least four years for statistical purposes.

SEC. 2. Chapter 5 (commencing with Section 817) is added to Title 2 of Part 2 of Division 2 of the Civil Code, to read:

CHAPTER 5. HOUSING COOPERATIVES AND HOUSING COOPERATIVE TRUSTS

817. “Limited-equity housing cooperative” or a “workforce housing cooperative trust” means a corporation organized on a cooperative basis that, in addition to complying with Section 817.1 as may be applicable, meets all of the following requirements:

(a) The corporation is any of the following:

(1) Organized as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

(2) Holds title to real property as the beneficiary of a trust providing for distribution for public or charitable purposes upon termination of the trust.

(3) Holds title to real property subject to conditions that will result in reversion to a public or charitable entity upon dissolution of the corporation.

(4) Holds a leasehold interest, of at least 20 years' duration, conditioned on the corporation's continued qualification under this section, and provides for reversion to a public entity or charitable corporation.

(b) (1) The articles of incorporation or bylaws require the purchase and sale of the stock or membership interest of resident owners who cease to be permanent residents, at no more than a transfer value determined as provided in the articles or bylaws, and that shall not exceed the aggregate of the following:

(A) The consideration paid for the membership or shares by the first occupant of the unit involved, as shown on the books of the corporation.

(B) The value, as determined by the board of directors of the corporation, of any improvements installed at the expense of the member or a prior member with the prior approval of the board of directors.

(C) Accumulated simple interest, an inflation allowance at a rate that may be based on a cost-of-living index, an income index, or market-interest index, or compound interest if specified in the articles of incorporation or bylaws. For newly formed corporations, accumulated simple interest shall apply. Any increment pursuant to this paragraph shall not exceed a 10-percent annual increase on the consideration paid for the membership or share by the first occupant of the unit involved.

(2) (A) Except as provided in subparagraph (B), for purposes of a return of transfer value, both of the following are prohibited:

(i) A board of directors returning transfer value, either full or partial, to a member while he or she still remains a member.

(ii) An existing member accepting the return of his or her transfer value, either full or partial.

(B) A board of directors may return to an existing member and the existing member may accept return of his or her transfer value in the event that the member moves within the cooperative from

a category of unit initially valued at a higher price to a different category of unit valued at a lower price.

(c) The articles of incorporation or bylaws require the board of directors to sell the stock or membership interest purchased as provided in subdivision (b) to new member-occupants or resident shareholders at a price that does not exceed the “transfer value” paid for the unit.

(d) The “corporate equity,” that is defined as the excess of the current fair market value of the corporation’s real property over the sum of the current transfer values of all shares or membership interests, reduced by the principal balance of outstanding encumbrances upon the corporate real property as a whole, shall be applied as follows:

(1) So long as any such encumbrance remains outstanding, the corporate equity shall not be used for distribution to members, but only for the following purposes, and only to the extent authorized by the board, subject to the provisions and limitations of the articles of incorporation and bylaws:

(A) For the benefit of the corporation or the improvement of the real property.

(B) For expansion of the corporation by acquisition of additional real property.

(C) For public benefit or charitable purposes.

(2) Upon sale of the property, dissolution of the corporation, or occurrence of a condition requiring termination of the trust or reversion of title to the real property, the corporate equity is required by the articles, bylaws, or trust or title conditions to be paid out, or title to the property transferred, subject to outstanding encumbrances and liens, for the transfer value of membership interests or shares, for use for a public or charitable purpose.

(e) Amendment of the bylaws and articles of incorporation requires the affirmative vote of at least two-thirds of the resident-owner members or shareholders.

817.1. (a) A “workforce housing cooperative trust” is an entity organized pursuant to this section that complies with Section 817 and with all of the following:

(1) Allows the governing board to be composed of two classes of board members. One class is elected by the residents, and one class is appointed by sponsor organizations, including employer and employee organizations, chambers of commerce, government

entities, unions, religious organizations, nonprofit organizations, cooperative organizations, and other forms of organizations. Resident members shall elect a majority of the board members. However, sponsor organizations may appoint up to one less than a majority of the board members. The numerical composition and class of the sponsor and resident board members shall be set in the articles of incorporation and in the bylaws.

(2) Requires the charter board of a workforce housing cooperative trust to be composed of only sponsor board members, to remain in place for one year after the first resident occupancy. One year after the first resident occupancy, the resident members shall elect a single board member. Three years after the first resident occupancy, resident members shall elect a majority of the board members.

(3) Prohibits the removal of the appointees of sponsor organizations, except for cause.

(4) Allows for the issuance of separate classes of shares to sponsor organizations or support organizations. These shares shall be denominated as “workforce housing shares” and shall receive a rate of return of no more than 10 percent simple interest pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 817.

(5) Requires, in order to amend the bylaws or articles of incorporation of a workforce housing cooperative trust, the affirmative vote of at least a majority of the resident-owner members or shareholders and a majority of each class of board members. The rights of the sponsor board members or the sponsors shall not be changed without the affirmative vote of two-thirds of the sponsor board members.

(b) A workforce housing cooperative trust shall be entitled to operate at multiple locations in order to sponsor limited-equity housing cooperatives. A workforce housing cooperative trust may either own or lease land for the purpose of developing limited-equity housing cooperatives.

(c) A workforce housing cooperative trust may be created when at least 51 percent of the occupied units in a multifamily property that is in foreclosure support efforts to buy the building or property.

817.2. The procedure for the dissolution of a limited-equity housing cooperative or workforce housing cooperative trust that receives or has received a public subsidy shall be as follows:

(a) The city, or the county for any unincorporated area, in which the limited-equity housing cooperative or workforce housing cooperative trust is located, shall hold a public hearing. The cooperative or trust shall pay for all costs associated with the public hearing.

(b) The city or county shall provide notice to all interested parties. The notice shall be given at least 120 days prior to the date of the hearing. The city or county shall obtain a list of all other limited-equity housing cooperatives and cooperative development organizations in the state from the California Center for Cooperative Development, if the list exists, and provide notice to all of the entities on the list in an effort to create a merger with an existing limited-equity housing cooperative or workforce housing cooperative trust. The notice shall be mailed first class, postage prepaid, in the United States mail.

(c) If the dissolving limited-equity housing cooperative or workforce housing cooperative trust merges with an existing cooperative or trust, to the extent possible, the merger shall be with the geographically closest cooperative or trust.

(d) If the dissolving limited-equity housing cooperative or workforce housing cooperative trust does not merge with an existing cooperative or trust, both of the following shall occur:

(1) Upon completion of the public hearing required pursuant to subdivision (a), the city or county shall adopt a resolution approving of the dissolution and make a finding that the dissolution plan meets the requirements of state and federal law, meets the donative intent standards of the United States Internal Revenue Service, and is free of private inurement, which includes, but is not limited to, a prohibition on any member receiving any payment in excess of the transfer value to which he or she is entitled pursuant to subdivision (b) of Section 817.

(2) The city or county shall forward all of the information and written testimony from the hearing to the Office of the Attorney General for the Attorney General to consider as part of his or her ruling on the dissolution.

817.3. Each entity named as a sponsor organization of a workforce housing cooperative trust formed pursuant to Section 817 shall have the legal standing of a member unless it revokes, in writing, its sponsorship.

817.4. (a) In any action instituted on or after January 1, 2010, against a board of directors and its members based upon a breach of corporate or fiduciary duties or a failure to comply with the requirements of this chapter, a prevailing plaintiff may recover reasonable attorney's fees and costs.

(b) If an organization formed under this chapter uses public funds, it shall not use any corporate funds to avoid compliance with this chapter or to pursue dissolution if the intent or outcome is for some or all of the members to receive any payment in excess of the transfer value to which he or she is entitled pursuant to subdivision (b) of Section 817.

SEC. 3. Section 1351 of the Civil Code is amended to read:

1351. As used in this title, the following terms have the following meanings:

(a) "Association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

(b) "Common area" means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing. However, the common area for a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

(c) "Common interest development" means any of the following:

- (1) A community apartment project.
- (2) A condominium project.
- (3) A planned development.
- (4) A stock cooperative.

(d) "Community apartment project" means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

(e) "Condominium plan" means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting

to the recordation of the condominium plan pursuant to this title signed and acknowledged by the following:

(A) The record owner of fee title to that property included in the condominium project.

(B) In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years.

(C) In the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests.

(D) The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. Further, in the event a conversion to condominiums of a community apartment project or stock cooperative has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, the certificate need only be signed by those owners, trustees, beneficiaries, and mortgagees approving the conversion.

A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required pursuant to this subdivision.

(f) A “condominium project” means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an

entire structure containing one or more units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

(g) “Declarant” means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

(h) “Declaration” means the document, however denominated, which contains the information required by Section 1353.

(i) “Exclusive use common area” means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

(1) Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(2) Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(j) “Governing documents” means the declaration and any other documents, such as bylaws, operating rules of the association,

articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

(k) “Planned development” means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1.

(l) “Separate interest” has the following meanings:

(1) In a community apartment project, “separate interest” means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, “separate interest” means an individual unit, as specified in subdivision (f).

(3) In a planned development, “separate interest” means a separately owned lot, parcel, area, or space.

(4) In a stock cooperative, “separate interest” means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common areas.

The estate in a separate interest may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(m) “Stock cooperative” means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The

owners' interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

A "stock cooperative" includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 817.

SEC. 4. Section 33007.5 of the Health and Safety Code is repealed.

SEC. 5. Section 33413.7 of the Health and Safety Code is amended to read:

33413.7. An agency causing the rehabilitation, development, or construction of replacement dwelling units, other than single-family residences, pursuant to Section 33413 or Section 33464, or pursuant to a replacement housing plan as required by Section 33413.5, or pursuant to provisions of a redevelopment plan required by Section 33334.5, primarily for persons of low income, as defined in Section 50093, shall give preference to those developments that are proposed to be organized as limited-equity housing cooperatives, when so requested by a project area committee established pursuant to Section 33385, provided the project is achievable in an efficient and timely manner.

The limited-equity housing cooperatives shall, in addition to the provisions of Section 817 of the Civil Code, be organized so that the consideration paid for memberships or shares by the first occupants following construction or acquisition by the corporation, including the principal amount of obligations incurred to finance the share or membership purchase, does not exceed 3 percent of the development cost or acquisition cost, or of the fair market value appraisal by the permanent lender, whichever is greater.

SEC. 6. Section 50073 of the Health and Safety Code is amended to read:

50073. "Housing development," for the purpose of housing assisted by the department, means any work or undertaking of new construction or rehabilitation, or the acquisition of existing residential structures in good condition, for the provision of housing that is financed pursuant to the provisions of this division for the primary purpose of providing decent, safe, and sanitary housing for persons and families of low or moderate income. "Housing

development” also means housing financed pursuant to this part for rental occupancy of, for resale to, or sold to, persons and families of low or moderate income. Notwithstanding other provisions of this section, “housing development” does not include a work or undertaking financed by a neighborhood improvement loan. A housing development may include housing for other economic groups as part of an overall plan to develop new or rehabilitated communities or neighborhoods, where housing for persons and families of low or moderate income is a primary goal. A housing development may include any buildings, land, equipment, facilities, or other real or personal property that the agency determines pursuant to its rules and regulations to be necessary or convenient in connection with the provision of housing pursuant to this division, including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities, such as administrative, community, health, recreational, educational, commercial facilities, and child-care facilities that the agency determines are an integral part of a housing development or developments.

“Housing development” includes the acquisition of a residential structure by a nonprofit housing sponsor, whether or not including rehabilitation, for the purpose of forming a limited-equity housing cooperative as defined in Section 817 of the Civil Code.

Approved _____, 2009

Governor